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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 Gilbert Figueroa,

7 Plaintiff,

8 v.

9 Gill, et al.,

10 Defendants.

Case No. 2:22-cv-00477-ART-DJA

Order

11 This matter is before the Court on its review of the docket. Plaintiff has not served
12 Defendants Jordan Roos and Wade Bettencourt. However, because that lack of service appears to
13 be due to the lack of a service order, the Court will extend the time for service and order service
14 on these Defendants.

15 On September 16, 2022, the Court screened Plaintiff's first amended complaint, allowed
16 his Fourth Amendment excessive force claim to proceed against Defendants Officers Gill,
17 Fletcher, and Prettle and Does 1-10 when Plaintiff learned their identities. (ECF No. 13). The
18 Court also ordered service on these Defendants. (*Id.*). On June 30, 2023, the undersigned
19 recommended that Plaintiff's motion to amend be denied without prejudice. (ECF No. 41).
20 Plaintiff had sought to add Las Vegas Metropolitan Police Department ("LVMPD") to his claim
21 for excessive force under the Fourth Amendment, to assert a municipal liability claim against
22 LVMPD, and to add a claim for conspiracy against two new officer defendants and a Doe officer.
23 (ECF No. 35). However, the Court noted that Plaintiff had not demonstrated good cause to
24 amend his complaint after the deadline to amend pleadings and add parties had passed and thus
25 recommended denying the motion. (ECF No. 41).

26 Plaintiff provided further argument in opposition to that report and recommendation.
27 (ECF No. 42). With this additional information, the Honorable District Judge Anne R. Traum
28 found that Plaintiff had demonstrated good cause to amend his complaint to add Defendants

1 Bettencourt and Roos. (ECF No. 51). So, Judge Traum allowed Plaintiff to file his second
2 amended complaint. (*Id.*). However, the Court did not enter an order regarding service.

3 On April 5, 2024, the Clerk's Office entered a notice that the action could be dismissed
4 without prejudice as to Bettencourt and Roos if proof of service was not filed with the Clerk by
5 May 5, 2024. (ECF No. 63). Plaintiff filed a response to this notice on May 20, 2024, stating that
6 he is "preparing to summon Officer Bettencourt and Officer Roos." (ECF No. 65). Plaintiff also
7 filed proposed summonses for both officers along with USM-285 forms. (ECF No. 66).

8 Under Federal Rule of Civil Procedure 4(m), if a defendant is not served within ninety
9 days after the complaint is filed, the court must dismiss the action without prejudice against that
10 defendant or order that service be made within a specified time. But if the plaintiff shows good
11 cause for the failure, the court must extend the time for service for an appropriate period. Fed. R.
12 Civ. P. 4(m). Here, more than ninety days have passed since Plaintiff's second amended
13 complaint was filed. However, the Court finds good cause to extend the service deadline because
14 it did not originally order service and because Plaintiff has attempted to serve the added
15 Defendants. The Court will thus order service on Bettencourt and Roos and will extend the Rule
16 4(m) deadline by sixty days from the date of this order.

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18 **IT IS THEREFORE ORDERED** that that the Clerk of Court is kindly directed to issue
19 summonses to Wade Bettencourt and Jordan Roos, using the summonses that Plaintiff filed at
20 ECF No. 66.

21 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send the
22 USMS the following for service:

- 23 • Two copies of Plaintiff's second amended complaint (ECF No. 53);
 - 24 • the summonses issued to Wade Bettencourt and Jordan Roos;
 - 25 • two copies of the order screening Plaintiff's second amended complaint (ECF No.
26 51);
 - 27 • a copy of this order.
- 28

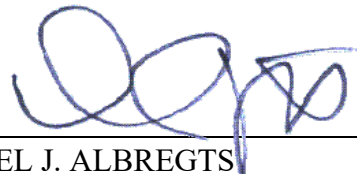
1 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Plaintiff
2 two copies of the Form USM-285.¹

3 **IT IS FURTHER ORDERED** that Plaintiff must complete one USM-285 form for
4 Bettencourt and one USM-285 form for Roos.

5 **IT IS FURTHER ORDERED** that Plaintiff will have until **November 18, 2024** to send
6 his completed USM-285 forms to the USMS for service. Within twenty-one days after receiving
7 a copy of the Form USM-285 back from the USMS showing whether service has been
8 accomplished, Plaintiff must file a notice with the Court identifying whether the Defendants were
9 served. If Plaintiff wishes to have service again attempted on an unserved Defendant, Plaintiff
10 must file a motion with the Court identifying that Defendant and specifying a more detailed name
11 and/or address for that Defendant or whether some other manner of service should be attempted.

12 **IT IS FURTHER ORDERED** that Plaintiff shall have until **December 27, 2024**, to
13 accomplish service.

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15 DATED: October 28, 2024

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18 DANIEL J. ALBREGTS
19 UNITED STATES MAGISTRATE JUDGE

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26 ¹ The Court notes that Plaintiff filed USM-285 forms on the docket. (ECF No. 66). However,
27 those forms are not complete because Plaintiff did not fill out the section titled “send notice of
28 service copy to requester at name and address below.” He also did not specify the number of
parties to be served. So, the Court will require Plaintiff to send the USMS new and complete
USM-285 forms.